

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
BRUNO CURULLI,

Plaintiff,

ANSWER

- against -

Docket No. 08 CV 4525

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants.
-----X

Defendant New York City Department of Education (“DOE”), by and through its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its Answer to the Complaint (“Complaint”), respectfully alleges as follows:

1. Denies the allegations asserted in paragraph “1” of the Complaint, except admit that plaintiff purports to proceed as set forth therein.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “2” of the Complaint.
3. Denies the allegations set forth in paragraph “3” of the Complaint.
4. Denies the allegations set forth in paragraph “4” of the Complaint, and respectfully refers the Court to 29 USC § 2617(2), for a complete and accurate statement of its contents.
5. Denies the allegations set forth in paragraph “5” of the Complaint, except admits that plaintiff purports to proceed as set forth therein.
6. Denies the allegations set forth in paragraph “6” of the Complaint, except admits that defendant is an employer within the meaning of 29 U.S.C. § 2611(4)(A), and respectfully refers the Court to Article 52-A of the New York State Education Law for a

complete and accurate statement of the Board of Education's and the New York City School District's organization and responsibilities.

7. Denies the allegations set forth in paragraph "7" of the Complaint, except admits that plaintiff was employed by DOE for at least twelve months prior to the date of this Answer.

8. Admits the allegations set forth in paragraph "8" of the Complaint.

9. Denies the allegations set forth in paragraph "9" of the Complaint.

10. Denies the allegations set forth in paragraph "10" of the Complaint, except admits that on or about June 11, 2007 plaintiff submitted an application for intermittent leave pursuant to the Family Medical Leave Act to care for his spouse's serious illness.

11. Denies the allegations set forth in paragraph "11" of the Complaint, and denies knowledge or information sufficient to form a belief to the truth of the allegations regarding what plaintiff learned through his union.

12. Denies the allegations set forth in paragraph "12" of the Complaint, except admits that plaintiff was intermittently absent sixteen days and late on twenty-one days during the 2006-2007 school year.

13. Denies the allegations set forth in paragraph "13" of the Complaint, except admits that plaintiff's June 11, 2007 request for leave pursuant to the Family Medical Leave Act was denied by DOE.

14. Denies the allegations set forth in paragraph "14" of the Complaint, except admits that for the 2006 to 2007 school year plaintiff received a rating of "unsatisfactory" on his Annual Professional Performance Review and that one of the factors contributing to this rating was plaintiff's excessive absenteeism.

15. Denies the allegations set forth in paragraph “15” of the Complaint.

16. Denies the allegations set forth in paragraph “16” of the Complaint.

AS AND FOR A FIRST DEFENSE

17. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND DEFENSE

18. Any claims of violations of the Family Medical Leave Act in the Complaint which accrued more than two years prior to plaintiff’s commencement of this action are time-barred and must be dismissed.

AS AND FOR A THIRD DEFENSE

19. Defendant has not violated any rights, privileges, immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

FOR A FOURTH DEFENSE


71. Defendant has not interfered with, restrained or denied plaintiff’s rights under the Family Medical Leave Act.

WHEREFORE, defendant respectfully requests that this Court issue an order dismissing the Complaint in its entirety and denying all relief requested therein, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 11, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant
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New York, New York 10007
(212) 788-0759
rhirschk@law.nyc.gov

By:



Rebecca R. Hirschklau
Assistant Corporation Counsel

DECLARATION OF SERVICE BY MAIL

I, **REBECCA R. HIRSCHKLAU**, declare pursuant to 28 U.S.C. § 1746, and under penalty of perjury, that today, December 11, 2008, I served the annexed DEFENDANT'S ANSWER TO THE COMPLAINT upon:

Stewart Lee Karlin, Esq.
9 Murray Street, Suite 4W
New York, New York 10007

by regular first-class mail by placing a copy of the same, enclosed in a postpaid properly addressed wrapper, in a depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to the said plaintiff, to the said address, being the address within the state theretofore designated by said petitioner for that purpose.

Dated: New York, New York
December 11, 2008



REBECCA R. HIRSCHKLAU
Assistant Corporation Counsel
rhirschk@law.nyc.gov

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MICHAEL A. CARDOZO <i>Corporation Counsel of the City of New York</i> Attorney for Respondent 100 Church Street, Room 2-183 New York, N.Y. 10007-2601 Of Counsel: Rebecca R. Hirschklau Tel: (212) 788-0759 NYCLIS No.: 2008-034677	
<i>Due and timely service is hereby admitted.</i>	
<i>New York, N.Y., 200.....</i>	
<i>..... Esq.</i>	
<i>Attorney for</i>	